



# COLLEGE OF NATUROPATHIC PHYSICIANS OF BRITISH COLUMBIA

---

## JURISPRUDENCE

### 1. THE PROFESSIONAL RELATIONSHIP

#### ***Nature of the Relationship***

The nature of the relationship between a naturopathic physician and his patient is analogous to that between solicitor and client. Neither the naturopathic physician (hereinafter referred to as "doctor") nor the solicitor is a guarantor or insurer of success unless there is an express contract to that effect. The doctor like the lawyer is in a fiduciary or trust relationship with his patient. Thus the doctor has the duty to act with utmost good faith. His professional duty cannot conflict with his personal interests; he must not mislead his patient.

#### ***Duties of the Doctor***

A doctor has no duty to accept a person as a patient, but once he has agreed to attend then his obligations continue as long as the case requires attention. He may withdraw from a case provided that he gives the patient sufficient notice to obtain another doctor.

A doctor has no right to reveal confidential information obtained in a professional capacity. Information so acquired is the secret of the patient and under his control. The patient has the right to require that the information not be divulged. The common law, however, recognizes no privilege for communications made by a patient to his doctor. In fact, some provincial legislation, such as the Chapter 183 section 32.3, Health Professions Act (RSBC 1996) requires the doctor to report certain medical information obtained from a patient.

#### ***Informed Consent***

A patient, when consulting a doctor, has the right to an examination, diagnosis, and advice regarding treatment. Thereafter, it is for the patient to determine what, if any treatment will be undertaken. The patient must consent to the actual treatment to be undertaken. The doctor may be found liable for treatment which extends beyond that for which consent was given. Consent must be voluntary and informed. It is not voluntary where deceit, coercion or fraudulent misrepresentation as to the nature of the treatment is involved.

Two recent Supreme Court of Canada decisions provide some guidance on the current law of informed consent in British Columbia: Hopp v. Lepp (1980) 2 S.C.R. 192 and Reibl v. Hughes (1980) 2 S.C.R. 880.

Prior to these two decisions a doctor had an obligation to disclose to his patient all risks that his colleagues would normally disclose with respect to the proposed treatment. In so doing, the doctor had to consider his patient's intellectual and emotional characteristics as well as the doctor/patient relationship. In other words, the patient was viewed on a subjective rather than an objective level. On the question of causation, a subjective test was applied: would that patient if informed of the risks have chosen to proceed with the treatment?

It is now established that a doctor has a duty to advise his patient of the risks of any treatment. In a court proceeding, the patient has the onus of adducing evidence from which a judge construes the necessary standard of disclosure. The sources of such evidence, namely the patient and the medical profession, are of equal importance. The evidence from the medical profession focuses on the recognized risks, their nature and likelihood of occurrence and whether they are typically explained to the patients. The patient provides evidence as to what the doctor knew or should have known as relevant to the patient. An objective standard for determining causation is applied: would a reasonable person in the patients'

particular situation have decided to forego the procedure had he been informed of the particular risk in issue?

Adequate disclosure by a doctor requires answering any specific questions posed by a patient as to the risks involved and without being questioned, disclosure of the nature of the proposed treatment, its gravity, any "material" risks, and any "special or unusual" risks attendant upon it. Although a certain risk may only be a mere possibility, which ordinarily need not be disclosed, it should be regarded as a material risk requiring disclosure if its occurrence carries serious consequences such as paralysis or death.

Material risks have been defined as significant risks that pose a real threat to the patient's life, health or comfort. A small chance of serious injury or death or a significant chance of slight injury may not be considered material. Unusual or special risks are those that are not ordinary, common every day matters, but are known to occur occasionally. There must be disclosure of risks to which a reasonable patient would be likely to attach significance in deciding whether to undergo the proposed treatment. In making this determination, the degree of probability of the risk and its seriousness are relevant factors. Thus, "unusual or improbable risks" should be disclosed if their consequences are serious and, conversely, a minor risk should be disclosed if it is a probable result or is inherent in the process. Risks that are not reasonably foreseeable need not be disclosed.

A standard form of authorization and consent prior to a particular treatment does not protect a doctor from civil liability, unless the patient is satisfied with the explanations of the procedure at the time of signing the consent form.

## **2. CIVIL LIABILITY**

### ***Negligence Action***

A successful negligence action must meet four requirements:

- 1) The defendant must owe the plaintiff a legal duty of care.
- 2) The defendant must breach the standard of care established by law.
- 3) The plaintiff must suffer injury or loss.
- 4) The defendant's conduct must have been the actual and legal cause of the plaintiff's injury.

### ***Duty of Care***

While a doctor may have an ethical duty to treat someone, he has no legal duty to do so. However, once the doctor/patient relationship has been formed, the doctor's duty of care towards his patient continues until the relationship is terminated. This duty requires the doctor to take affirmative action when necessary.

### ***Standard of Care***

A doctor does not guarantee success or perfect results, but only that he will use a reasonable degree of skill and learning and exercise reasonable care and his best judgment to achieve a good result. A doctor impliedly warrants that he is competent, and his requisite degree of skill will be presumed until the contrary is shown.

A doctor's conduct will be judged according to the standards of his profession existing at the time the mishap occurred. The usual test of foreseeability is inapplicable where the naturopathic profession is generally unaware of the risk or the type of injury suffered by the patient at the time the treatment was administered. The degree of care required by the law is commensurate with the potential danger; thus, as the degree of risk for certain treatments or procedures increases, the standard of care expected of the doctor correspondingly increases. The highest standard of care is expected of a doctor using a new or experimental technique.

The standard of proficiency required of a naturopathic physician is that ordinarily possessed by average members of the profession. He must bring to his task a reasonable degree of skill and knowledge, and he must exercise a reasonable degree of care. He is required to demonstrate that degree of skill which could reasonably be expected of a normal, prudent practitioner of the same experience and standing.

A general practitioner has a duty to consult with or refer his patient to a specialist in a variety of circumstances:

- 1) When he is unable to diagnose the cause of his patient's symptoms.
- 2) When the patient is not responding to treatment.
- 3) When the doctor is not competent to give the necessary treatment.
- 4) When the doctor must protect against his own inexperience.
- 5) When the doctor is unable to continue treatment of the patient.

A specialist must display a standard of proficiency of an average specialist in his field. He is expected to possess and exercise a higher degree of skill in his particular specialty than would be expected of a general practitioner in that field.

### ***Injury and Causation***

In order to succeed in a negligence action, material loss or damage must be proved. A plaintiff must establish a causal link between his injury and breach of the doctor's standard of care. The doctor's conduct must be the actual or proximate cause of the plaintiff's injury. The actual or proximate cause of the plaintiff's injury is determined by an enquiry as to whether the injury would have occurred "but for" the doctor's conduct.

Doctors will not be held responsible for unforeseeable accidents which occur in the normal course of naturopathic treatment. The reasonable foreseeability test is utilized for determining the actual or proximate cause in a negligence action. The court will consider whether a reasonable person should have anticipated that the consequences might be a natural result of that act or omission.

### ***Defenses***

A doctor may be exonerated from liability where his conduct complies with the customary practices of the naturopathic profession. However, where such customary practices are inadequate, the court may make a finding of negligence. While a doctor need not employ the most modern tools and equipment to meet the accepted standard of care, he cannot ignore them once they are in common use. If a doctor chooses to use an older and innovative procedure, he must meet a higher standard of care. A doctor who uses an obsolete method does not meet the standard of care. Compliance with approved practice, therefore, may either be a complete answer to a claim that a reasonable standard of care was not met, or it may simply raise a prima facie case that the standard of care was met.

An error of judgment is distinguished from an act of carelessness or lack of skill or knowledge. An honest and intelligent exercise of judgment satisfies the professional obligation. Thus, a doctor is not liable for an honest error of judgment. A doctor may admit his error, but deny liability in negligence on the basis that he exercised the skill, knowledge and judgment of the average naturopathic physician when dealing with the case.

A patient may be found to be contributory negligent in causing his injury: Negligence Act, R.S.B.C 1979, chapter 298. For example, the prolonged use of drugs or failure to seek timely medical treatment may result in findings of contributory negligence.

Expiry of a limitation period is an absolute defense to any legal action, including one against doctors and other health care professionals. In British Columbia, an action must be brought against a doctor within two years from the date that the plaintiff has knowledge of the facts relevant to an action: Limitation Act, R.S.B.C. 1979, chapter 236 and Health Professions Act part 5 Offences 51(3).

### ***The Doctor in Court: As Witness***

It is possible that in the course of your practice as a naturopathic physician you may from time to time be requested by a patient and his lawyer to provide a medical-legal report and be available as a witness at the trial of a personal injury claim. The patient will likely have been injured in a motor vehicle accident. The claim will be disputed by ICBC. Legal proceedings will have been commenced in the Supreme Court of British Columbia. Accordingly, it is important to appreciate how the legal system operates and your role within the context of that system.

The law recognizes that health care practitioners, naturopathic physicians included, are possessed of special skill and knowledge in the diagnosis and treatment of injuries to the human body. The academic training and years of experience in the practice of your profession form the basis of that special status. The judge or jury hearing the case will be obliged to attach far greater weight to your observations and opinions than that of a lay person. However, with that special status is a corresponding responsibility to provide the court with accurate information.

Sections 10 and 11 of the Evidence Act, R.S.B.C. 1979, chapter 116 are designed to encourage the litigants and their lawyers to exchange medical-legal reports not later than thirty (30) days prior to the date on which the expert is expected to be called to give evidence. The Evidence Act is also designed to encourage the litigants and their lawyers to avoid calling the expert unless it is to explain the contents of his report or contradictions among the various reports. These provisions of the Evidence Act permit doctors to practice medicine, rather than spend numerous hours sitting around courthouses waiting to testify as an expert witness.

If the lawyers determine that it is necessary for you to appear in court to give viva voce evidence, you will receive a subpoena setting out the time and place of the hearing. The plaintiff's lawyer will notify you as to the specific time when you will be called. Invariably there will be a conflict with your personal or business schedule. You must remember, however, that if you fail to attend in court after being served with a subpoena, you may be held by the judge to be in contempt of court. This is a serious matter which can result in a fine, imprisonment, or both, so govern yourself accordingly.

When you attend at the courthouse to be a witness, you would be well-advised to refresh your memory in advance as to the circumstances of the patient. This means reviewing all your clinical notes, test results, medical text books on which you have relied, reports of other practitioners, and in particular your own medical-legal report. The plaintiff's lawyer will normally give you some advance warning as to the issues which are in dispute and on which you will likely be cross-examined. If the lawyer is thorough, he may even interview you at your office at some point prior to the trial.

It is important to remember that the proceedings are adversarial in nature. The lawyers will each attempt to extract evidence from you which is helpful to their cause, and tread very softly in those areas which are not so helpful. The plaintiff's lawyer during examination-in-chief may press you to be an advocate for his client, and in so doing have you overstate the severity of the patient's injuries or disability. The defendant's lawyer, on the other hand, during cross-examination may press you to defer to the greater skill and knowledge of the orthopedic surgeon or other specialist. The system is designed to allow the judge or jury to hear both sides of an issue and thereby reach an informed and just decision.

Before you are permitted to give evidence, it is necessary that you first be qualified as an expert witness. You will be required to identify your academic credentials and the extent of your experience in dealing with injuries or conditions such as that sustained by the patient. It is possible, though unlikely, that the defendant's lawyer may wish to cross-examine you as to your status as an expert.

When you are being challenged on your report or have been asked a difficult hypothetical question, it is worth remembering the following words of advice (drawn from page 283 of Legal Liability of Doctors and Hospitals in Canada), namely:

- 1) Listen to the question and be sure you understand it before answering it. Questions and answers are the foundations of a law suit.

- 2) Answer the question fully. If you are cut off or feel you are being restricted, ask to be permitted to finish your answer.
- 3) Do not hesitate to say you do not know the answer or to refuse to answer a question outside the scope of your expertise.
- 4) Do not get angry; be firm but polite.
- 5) You are not an advocate for the side that called you. Your duty is to assist the court. You are not expected to be an expert on the legal implication of your evidence.
- 6) Address yourself to the judge when answering. Seek his assistance if you feel you are being unfairly treated by a lawyer examining you.
- 7) Use simple language. Where medical terms are useful or unavoidable, explain them clearly.

As with many activities, the key to a successful performance as an expert witness is in the preparation. If you have expended a lot of effort on your medical-legal report and are familiar with the circumstances of the case, then you will find it very easy to give testimony in court.

### ***The Doctor in Court: As Defendant***

It is also possible that in the course of your practice as a naturopathic physician you may someday be served with a Writ of Summons and Statement of Claim, alleging that you have been negligent in the performance of your duties as a doctor. This can be the start of an extremely painful, time consuming and expensive experience. Although you may consider the claim by your former patient to be frivolous or vexatious, you should immediately obtain legal advice. You have only seven (7) days to enter an Appearance following service of the Writ, and only fourteen (14) days to file a Statement of Defense following service of the Statement of Claim. Time, therefore, is of the essence.

If you have liability insurance coverage, then the insurance company will normally retain a lawyer to handle the case on your behalf. That lawyer will require your complete co-operation. YOU must provide the lawyer with all pertinent information, including your clinical notes and patient records. You must disclose to the lawyer all facts, both favorable and unfavorable. You must avoid any further communications with the patient until the matter has been either settled out of court or judged on its merits in court.

The Rules of Court permit each party, both plaintiff and defendant, to be questioned well in advance of the trial before an Official Court Reporter. The reporter will produce a transcript of the questions and answers of each party, and the transcript can be used at trial to impeach the credibility of the witness. The evidence which you will be called upon to provide at both the examination for discovery and trial will be factual rather than opinion. You will be expected to explain all of your words and actions in relation to the patient and his injuries or condition.

At trial your own lawyer will lead you through examination-in-chief. You will be the subject to cross-examination by the plaintiff's lawyer. Once again, the key to successful performance as a witness at trial is in the preparation.

It is probable that one or more other health care practitioners, including naturopathic physicians, will be called as expert witnesses to give evidence in your defense. It is possible that the expert witness may not have met with the patient directly, but is being called upon to give his opinion in response to a hypothetical question. The expert witness will have prepared a medical-legal report, a copy of which will be given to the plaintiff's lawyer not later than thirty (30) days prior to the date on which your expert is to be called to give evidence.

Due to the backlog of cases before the courts, it is possible that the action may not be heard for up to one (1) or two (2) year following the date on which the proceedings were commenced. Several weeks prior to the trial, the lawyers will be obliged to appear before a judge in his chambers to clarify the issues which are in dispute and to determine if any sort of settlement is possible. The judge will provide the lawyers with his or her own view as to the likely result of the trial and encourage the lawyers to work out a settlement. As a result, it is not uncommon for negligence actions to be settled at the very last minute prior to trial, sometimes on the steps of the courthouse.

### **3. CRIMINAL LIABILITY**

#### ***Criminal Code of Canada***

A doctor may be subject to criminal as well as civil liability. Criminal liability typically arises in three situations as set out in the Criminal Code, R.S.C. 1970, chapter C-34 as amended:

- 1) Causing death or bodily harm by criminal negligence (sections 220-221).
- 2) Failing to have and use reasonable knowledge, skill and care in administering treatment (section 216); or
- 3) Performing a non-therapeutic abortion (section 287).

Everyone who by criminal negligence causes death or bodily harm to another person is guilty of an indictable offence. To convict a doctor of manslaughter arising from criminal negligence, the Crown must prove the essential ingredients of civil negligence. As well, the Crown must establish that the negligence in question demonstrates such disregard for the life and safety of others as to constitute conduct deserving punishment by the state.

Most cases of criminal negligence involving doctors have resulted in acquittal. An unregistered medical doctor practicing as a naturopathic physician, however, was found guilty of criminal negligence for recommending a low protein diet which resulted in malnutrition and death of a child: R.V. Rogers (1968) 65 W.W.R. 193. In another case, a naturopathic physician was found guilty of criminal negligence for utilizing the bilateral nasal specific treatment which through defective equipment resulted in the death of a child: R.V. Olson (1984) unreported.

Everyone who undertakes to administer medical treatment to another person or do any other lawful act that may endanger the life of another person is, except in cases of necessity, under a legal duty to have and use reasonable knowledge; skill and care in so doing.

#### ***Food and Drugs Act***

Criminal liability may arise through violation of the Food and Drugs Act, R.S.C. 1970. F-27. Several naturopathic physicians were found guilty of dispensing certain Schedule F drugs even though the substances were recognized by the naturopathic profession as homeopathic remedies: R.V. Farnsworth (1981) and R.V. Tyler (1982) unreported.

Historically section 5(1) (o) of the Naturopaths Act, R.S.B.C 1979, chapter 297 authorized the Board of the College of Naturopathic Physicians of B.C. to provide a schedule of preparations and medicines authorized for use by members registered under the Act, such schedule was never formally approved by the Lieutenant Governor in Council. Because the schedule had never been approved, the Crown was able to argue that naturopathic physicians in British Columbia were without lawful authority to prescribe, dispense and administer the preparations and medicines enumerated therein. This matter has been under consideration by the Medical Advisory Committee and the Provincial Ministry of Health at least since 1979.

The authority to provide a schedule of preparations now resides with the Ministry of Health through the Lieutenant Governor in Council as stated in Part 2 , Section 12 (2)(c) "In respect of a designated health profession, the Lieutenant Governor in Council may, by regulation, prescribe the following:

- (c) services that may be performed by registrants;"

Part 2, section 19 (k) of the Health Professions Act authorizes the Board for the College to establish standards, limits or conditions for the practice of Naturopathic Medicine by its registrants.

On April 8, 2009, George Abbott, Minister of Health Services ordered that the Naturopathic Physicians Regulation, B.C. Reg. 282/2008, be amended as set out in Ministerial Order No. M130. This order finally authorized the full scope of practice for N.D.'s including the schedule of preparations.

#### **4. DISCIPLINARY PROCEEDINGS**

##### ***Jurisdiction***

Chapter 183, Part 2 Section 19 of the Health Professions Act authorizes the Board for the College of Naturopathic Physicians of B.C. to make rules for the discipline and control of members, and for the handling of complaints by patients.

Rule 43 of the College rules states that a doctor may be subject to discipline if he has been guilty of:

- a) Misconduct.
- b) Ignorance or incompetence in the performance of his duties as a naturopathic physician.
- c) Fraud or misrepresentation in obtaining registration.
- d) Default of payment of any fees, assessments or fines.
- e) Any breach of the Act or rules.

##### ***Definition of Misconduct***

The word “misconduct” was not defined in the Naturopaths Act, R.S.B.C. 1979, chapter 297 nor in the rules made under the Act. This required that the word “misconduct” had to be defined by the courts in the context of disciplinary proceedings relating to other health care professionals. The question begged, ‘By what standard is the conduct of the doctor to be judged?’

This issue of defining “misconduct” was simplified by the Ministry of health repealing all the separate Acts of the different health care professions in B.C. and replacing them with the Health Professions Act April, 2009. This new general HPA defines misconduct as;

- Sexual misconduct
- Unethical conduct
- Infamous conduct
- Conduct unbecoming a member of the health profession

While a variety of terms other than “misconduct” have been used in the context of determining whether health care professionals should be disciplined, such as “unbecoming” or “unprofessional” conduct, the courts have been consistent in stating. What standard must be used to measure the conduct which is the subject of the complaint. The standard is whether the conduct complained of is infamous or disgraceful conduct in the judgment of the member’s professional brethren of good repute and competency. While other standards have been mooted, the case authorities generally support the application of this standard in the context of disciplinary hearings with respect to doctors.

What constitutes misconduct in fact includes a variety of things done in the course of the practice of the profession. These include for example sexual relations with patients, over billing, over treating, advertising and guaranteeing cures. Misconduct may also include things which are not done in the course of the practice of the profession, but which when done by a professional bring the profession into disgrace. The example of this found in the Canadian cases is a conviction for evading the payment of income taxes.

It should be noted that the cases discussed do not directly deal with the word “misconduct”. This is because the statutes which govern professionals and deal with disciplinary proceedings generally use words such as “infamous”, “disgraceful”, “unbecoming”, “improper”, or “unprofessional” to qualify the word “conduct”. The difference between the adjectives is a matter of degree; for example, while over servicing patients and thereby over billing the provincial medical plan may be unprofessional conduct, it may not be so disgraceful or dishonorable so as to amount to infamous conduct.

See: Re College of Physicians and Surgeons and Ahmad  
(1973), D.L.R. (3d) 381. at 392 (B.C.S.C.)

Whatever the adjective qualifying “conduct”, the courts have generally adopted as a standard, against which to measure the conduct complained of, that which is infamous or disgraceful conduct in the judgment of his professional brethren of good repute and competency. This

standard was set out in the English Court of Appeal's decision in Allinson v. General Council of Medical Education and Registration, (1894) 1 Q.B. 750 at 763, per Lopes, L.J.:

"If it is shown that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonorable by his professional brethren of good repute and competency, then it is open to the General Medical Council to say that he has been guilty of infamous conduct in a professional respect."

The Allinson decision has been relied upon in a number of later cases dealing with disciplinary proceedings against medical doctors as to how the standard of conduct is to be measured.

- See: Carefoot and College of Physicians and Surgeons, (1926) 1 D.L.R. 236 (Sask. K.B. )
- and: Re Hett, (1937) 3 D.L.R. 687 (Ont. C.A.)
- and: Samuels v. Council of Physicians and Surgeons of Saskatchewan (1966), 57 W.W.R. 685 (Sask. Q.B.)
- and: Re "D" and Council of Physicians and Surgeons of B.C. (1970), 11 D.L.R. (3d) 570 (B.C.S.C.)
- and: Golomb and College of Physicians and Surgeons (1976), 68 D.L.R. (3d) 25 (Ont. D.C.)
- and: Green v. College of Physicians and Surgeons of Saskatchewan (1984), 31 Sask. L.R. 119

The Allinson decision has also been relied upon in cases dealing with disciplinary proceedings against dentists and pharmacists.

a) Dentists

- See: Re Davidson and Royal College of Dental Surgeons of Ontario (1925), 28 O.W.N. 200 (Ont. C.A.)
- and: Alberta Dental Association v. Sharp, (1930) 3 D.L.R. 652.

b) Pharmacists

- See: Re Starkman and Ontario College of Pharmacy (1965) 53 D.L.R. (2d) 22 (Ont. H.C.)
- and: Re Stout and Ontario College of Pharmacy (1977) 76 D.L.R. (3d) 44 (Ont. C.A.)

In Re Telford (1980). 40 B.C.R. 355 (C.A.) the court without reference to the Allinson decision, adopted a similar standard for testing the conduct of a professional person:

".....they (members of the tribunal) must assume that he (the professional whose conduct is complained of) is gifted with that share of knowledge and judgment which his status as a physician and surgeon implies; and on that assumption and by that standard his conduct must be tried."

A further test as to whether conduct amounted to unprofessional conduct was stated in Re Casullo and College of Physicians and Surgeons of Ontario (1974), 42 D.L.R. (3d) 43 (Ont. C.A.); appeal allowed on different grounds 67 D.L.R. (3d) 351 (S.C.C.):

“To bring the member’s conduct within the category of unprofessional, the Discipline Committee was required to find, in effect, that no adherent to standards accepted by any recognized medial institution, acting conscientiously, would have considered the ordering of the tests to be reasonable in the circumstances.”

The tests in Allinson, Telford, and Casullo make it clear that the conduct of the professional person is to be judged against the standards generally and reasonably accepted by members of the profession.

In determining whether the member is guilty of misconduct the tribunal must act as a court should act in the exercise of a judicial discretion:

“... That is to say, not according to private opinion, but on the evidence and according to the principles of reason and justice, upon which, if their decision is to stand, it must be justifiable.”

See: Hunt v. College of Physicians and Surgeons of Saskatchewan, (1925) 4 D.L.R. (Sask. K.B.)

And : Re Carefoot, supra

The effect of these cases is that the tribunal does not determine the standard of conduct by reference to the beliefs of the members composing the tribunal. But having heard the evidence and appreciating the standards demanded of their own profession better than others (in particular, courts on appeal), a decision of the tribunal ought not to be overturned by a court unless the decision cannot be regarded as reasonable.

See: Alberta Dental Association, supra

and: Re “D”, supra

A variety of things which occur in the course of practice have been found to constitute misconduct:

- a) Advertisements defaming fellow practitioners and their methods of treatment:  
See: Allinson, supra
- b) Guaranteeing cures;  
See: Carefoot, supra  
and: Re Hett, supra
- c) Sexual misconduct with a patient;  
See: Re “D”, supra
- d) Advertising the price of services and comparing with the price elsewhere;  
See: Alberta Dental Association, supra
- e) Over billing the provincial medical health plan;  
See: Golomb, supra
- f) Over billing the patient;  
See: Green, supra
- g) Over treating patients;  
See: Re College of Physicians and Surgeons and Ahmad, supra  
and: Re Casullo, supra
- h) Treating a minor without the consent of the parents;  
See: Re “D”, supra
- i) Performing an unnecessary operation, even where the patient is not harmed;  
See: Telford, supra
- j) Evasion of income taxes;  
See: Re Squires and Black, (1980), 107 D.L.R. (3d) 596 (Sask. Q.B.)  
and: Re Tureshi and Provincial Medical Board, (1984), 4 D.L.R. (4d) 326

This history of case law defining misconduct has contributed to "professional misconduct" being defined in Part 3, section 26 of the Health Professions Act to include 'sexual misconduct, infamous conduct and conduct unbecoming a member of the health profession'.

## **5. BIBLIOGRAPHY**

These materials represent a summary of the law of British Columbia in the designated subject areas relating to naturopathic physicians and have been prepared for the educational use of the College of Naturopathic Physicians of British Columbia. A more comprehensive review of the law may be obtained from the following text books and journals, namely:

Doctors and the Law, by Gilbert Sharpe and Glenn Sawyer, Butterworths, (1978)

The Physician and Canadian Law, by T. David Marshall, (2d), Carswell, (1979)

Legal Liability of Doctors and Hospitals in Canada, by Ellen I. Picard, (2d), Carswell, (1984)

The Canadian Law of Patient Records, by Lorne Elkin Rozovsky and Fay Adrienne Rozovsky, Butterworths, (1984)

The Law and Medicine in Canada, by Gilbert Sharpe, (2d), Butterworths, (1987)

Law and Medical Ethics, by J.K. Mason and R.A. McCall Smith, (2d), Butterworths, (1987)

Canadian Medical Law: An Introduction for Physicians and other Health Care Professionals, by John C. Irvine and Philip H. Osborne, Carswell, (1989)

The Canadian Law of Consent to Treatment, by Lorne Elkin Rozovsky and Fay Adrienne Rozovsky, Butterworths, (1990)

Health Law in Canada, journal published quarterly by the Canadian Institute of Law and Medicine, Butterworths